IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.42 OF 2003
IN
SUMMARY SUIT NO. 2732 OF 2002

Kesarbai M. Arjan ....Plaintiff.

v/s

Bharat Vasantlal ....Defendant.

Mr Sameer A. Virani, advocate for the plaintiff.

Ms. R.T. Parekh, advocate for the defendant.

CORAM: V.M. KANADE, J.

DATE : 31st August, 2004

P.C.

1. Plaintiff has filed a suit against the defendant seeking recovery of an amount of Rs 72,187.50 along with interest @ Rs 1.25 paise per month on the principal amount of Rs 50,000/-. Plaintiff's case in the plaint is that plaintiff paid the defendant Rs 50,000/- by cash on 2/7/1999 and the defendant agreed to repay the said amount along with interest at the rate of Rs 1.25 per month. Defendant had issued a Demand Promissory Note dated 2/7/1999. Since the defendant failed and neglected to pay the said amount, a notice dated 4/3/2002 was issued by the plaintiff's advocate. Defendant, even after the receipt of the said notice, did not pay the said amount and, therefore, the said suit was filed by the plaintiff.

Plaintiff has relied on a Demand Promissory Note.

2. Defendant has filed his reply. In reply, it is stated that defendant does not know the plaintiff and he has never seen the plaintiff. It is submitted that the document at Exhibit-A is a forged and fabricated document and that the said document was liable to be impounded. It is further submitted in the reply that the suit was not maintainable under Order XXXVII. It is further submitted that the suit was barred by limitation.

3. In the affidavit in rejoinder, plaintiff has stated that the defendant has made a false and frivolous statement that his signature is forged. She has stated in her rejoinder that if the signature of the defendant on the Demand Promissory Note is compared and verified with the naked eyes with the documents which are admittedly signed by the defendant, it can be seen that the defendant is making a false statement.

4. I have heard the learned Counsel appearing on behalf of the plaintiff and the defendant at length. It can be seen that the only defence raised by the defendant is that the signature on the Demand

Promissory Note is forged and fabricated. Merely by stating that the said document is forged, the defendant cannot be absolved from the liability of making payment under the Demand Promissory Note. Prima facie, on perusal of the Demand Promissory Note, and the affidavit in reply of the defendant dated 4/12/2003, the signature of the defendant on the vakalatnama indicates that the signature is the same. Thus, in my view, no triable defence has been raised by the defendant.

5. Conditional leave to defend the suit is granted to the defendant on defendant depositing an amount of Rs 50,000/- within 8 weeks from 3/11/2004.

6. Summons for Judgment is accordingly disposed of.

V.M. KANADE, J.